

House File 2686 - Introduced

HOUSE FILE _____
BY COMMITTEE ON WAYS AND
MEANS

(SUCCESSOR TO HF 2610)
(SUCCESSOR TO HSB 717)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to determination and identity protection and the
2 employer=employee relationship by preventing identity theft in
3 the procurement of employment, providing for the employment
4 classification of individuals, prohibiting employers from
5 knowingly employing unauthorized aliens, and imposing bail
6 restrictions against a person who is an unauthorized alien,
7 and providing penalties and an effective date.
8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
9 TLSB 6463HZ 82
10 ak/rj/24

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1 1 DIVISION I
1 2 IDENTITY THEFT
1 3 ARTICLE IX
1 4 IDENTITY THEFT DIVISION
1 5 Section 1. NEW SECTION. 10A.901 DEFINITIONS.
1 6 As used in this article:
1 7 1. "Administrator" means the person coordinating the
1 8 administration of the division.
1 9 2. "Division" means the investigations division of the
1 10 department of inspections and appeals.
1 11 Sec. 2. NEW SECTION. 10A.902 IDENTITY THEFT PREVENTION
1 12 == EMPLOYERS.
1 13 1. a. An employer, as defined in section 91A.2, or the
1 14 employer's designee shall certify under oath or affirmation by
1 15 signing the form described in subsection 2, under penalty of
1 16 perjury under subsection 3, that the employer or the
1 17 employer's designee has examined, within ten business days of
1 18 hiring a new employee, as defined in section 91A.2, to work in
1 19 this state, the driver's license or nonoperator's
1 20 identification card issued by the state of Iowa, Minnesota,
1 21 South Dakota, Nebraska, Missouri, Illinois, or Wisconsin of
1 22 the new employee for facial validity in order to verify the
1 23 new employee's identity.
1 24 b. The employer or the employer's designee shall make a
1 25 photocopy of the new employee's driver's license or
1 26 Iowa-issued nonoperator's identification card. The employer
1 27 or employer's designee shall retain the photocopy of the new
1 28 employee's driver's license or nonoperator's identification
1 29 card and the certified form for the period of the employee's
1 30 employment and for one year after the termination of the
1 31 employee's employment.
1 32 c. (1) An employer may delegate the examination,
1 33 certification, and recordkeeping to a designee, but shall be
1 34 obligated to review and shall remain responsible for the
1 35 designee's actions in paragraphs "a" and "b" relating to
2 1 examination, certification, recordkeeping, and hiring.
2 2 (2) Failure to fulfill the requirements pursuant to
2 3 paragraphs "a" and "b" shall subject an employer or an
2 4 employer's designee to a civil penalty not to exceed one
2 5 thousand two hundred fifty dollars for a first violation as
2 6 determined by the administrator. An employer or employer's
2 7 designee who commits a second violation within six years of
2 8 the first violation shall be subject to a civil penalty not to
2 9 exceed one thousand eight hundred seventy-five dollars as
2 10 determined by the administrator. An employer or employer's
2 11 designee who commits a third or subsequent violation within

2 12 six years of the first violation shall be subject to a civil
2 13 penalty not to exceed three thousand one hundred twenty-five
2 14 dollars as determined by the administrator.

2 15 (3) If the administrator determines an employer's designee
2 16 is responsible for a violation of paragraph "a" or "b" and
2 17 assigns a civil penalty to the designee, the administrator may
2 18 assign a second civil penalty up to the same amount to the
2 19 employer in accordance with the employer's responsibility
2 20 under subparagraph (1).

2 21 2. The division shall prescribe and provide a form that
2 22 the employer or employer's designee shall sign for each new
2 23 employee. The form shall include a statement that the
2 24 employer or the employer's designee has personally certified
2 25 under oath or affirmation that the employer or the employer's
2 26 designee has examined the new employee's driver's license or
2 27 Iowa-issued nonoperator's identification card and determined
2 28 that the license or card was facially valid to the best of the
2 29 employer's or employer's designee's knowledge, information,
2 30 and belief, under penalty of perjury under subsection 3. The
2 31 form shall include a place for the signee to identify whether
2 32 the signee is the employer or the employer's designee. For
2 33 informational purposes for the employer or the employer's
2 34 designee, the form shall include color examples of the back
2 35 and front of driver's licenses and nonoperator's

3 1 identification cards issued by the states of Iowa, Minnesota,
3 2 South Dakota, Nebraska, Missouri, Illinois, and Wisconsin.

3 3 3. a. A person who certifies under oath or affirmation a
3 4 false statement under subsection 1 commits a class "D" felony.

3 5 b. A person who procures or offers any inducement to
3 6 another to certify under oath or affirmation the requirements
3 7 of subsection 1 with the intent that the other will conceal
3 8 material facts commits a class "D" felony.

3 9 4. This section shall not infringe upon the authority of
3 10 the civil rights commission pursuant to chapter 216.

3 11 Sec. 3. NEW SECTION. 10A.903 ENFORCEMENT.

3 12 1. The administrator shall adopt rules pursuant to and
3 13 consistent with chapter 17A regarding investigations to
3 14 determine whether violations of this article or any rule
3 15 adopted pursuant to this article have occurred.

3 16 2. The administrator and inspectors of the division shall
3 17 have jurisdiction for investigation and enforcement in cases
3 18 where employers may be in violation of the requirements of
3 19 this article or rules adopted pursuant to this article.

3 20 3. If, upon investigation, the administrator or the
3 21 administrator's authorized representative believes that an
3 22 employer or an employer's designee has violated this article,
3 23 the administrator shall with reasonable promptness issue a
3 24 citation and civil penalty.

3 25 4. Each citation shall be in writing and shall describe
3 26 with particularity the nature of the violation, including a
3 27 reference to the provision of the statute alleged to have been
3 28 violated.

3 29 5. If a citation is issued, the administrator shall,
3 30 within seven days, notify the employer or employer's designee
3 31 by service in the same manner as an original notice or by
3 32 certified mail of the civil penalty, if any, proposed to be
3 33 assessed.

3 34 6. A determination by the administrator as to whether a
3 35 violation of this chapter or rules adopted pursuant to this
4 1 chapter has occurred shall be considered final agency action.

4 2 7. Judicial review of any final agency action of the
4 3 administrator taken pursuant to this chapter may be sought in
4 4 accordance with the terms of chapter 17A. If a petition for
4 5 judicial review is not filed within thirty days after service
4 6 of the determination of the administrator, the administrator's
4 7 determination shall be conclusive in connection with any
4 8 petition for enforcement which is filed by the administrator
4 9 after the expiration of the thirty-day period. In such case,
4 10 the clerk of court, unless otherwise ordered by the court,
4 11 shall forthwith enter a decree enforcing the order and shall
4 12 transmit a copy of the decree to the administrator and the
4 13 employer or employer's designee named in the petition.

4 14 Sec. 4. NEW SECTION. 10A.904 INTERAGENCY COOPERATION.

4 15 1. All state agencies shall cooperate under this article
4 16 by sharing information concerning employee identity
4 17 verification by employers or employers' designees pursuant to
4 18 this article.

4 19 2. Upon determining that an employer or an employer's
4 20 designee violated section 10A.902, the administrator shall
4 21 notify the appropriate state agencies, each of which shall
4 22 investigate the compliance with other applicable law by the

4 23 employer or employer's designee.
4 24 3. Cooperation under this article shall be considered a
4 25 duty of office for the heads of the state agencies or their
4 26 designees. Failure to so cooperate constitutes a violation of
4 27 section 721.2, subsection 6.

4 28 Sec. 5. NEW SECTION. 10A.905 REPORTING REQUIREMENT.

4 29 The administrator shall submit an annual report about the
4 30 administration of this article to the general assembly by
4 31 January 15. The first annual report shall be due January 15,
4 32 2010.

4 33 Sec. 6. Section 321.190, subsection 1, paragraph b, Code
4 34 2007, is amended to read as follows:

4 35 b. The department shall not issue a card to a person
5 1 holding ~~a~~ an Iowa driver's license. However, a card may be
5 2 issued to a person holding a temporary permit under section
5 3 321.181. A card may be issued to a nonresident as otherwise
5 4 prescribed in this section for the purpose of identity
5 5 verification for employment, pursuant to section 91F.1. The
5 6 card shall be identical in form to a driver's license issued
5 7 under section 321.189 except the word "nonoperator" shall
5 8 appear prominently on the face of the card. A nonoperator's
5 9 identification card issued to a person under eighteen years of
5 10 age shall contain the same information as any other
5 11 nonoperator's identification card except that the words "under
5 12 eighteen" shall appear prominently on the face of the card. A
5 13 nonoperator's identification card issued to a person eighteen
5 14 years of age or older but under twenty-one years of age shall
5 15 contain the same information as any other nonoperator's
5 16 identification card except that the words "under twenty-one"
5 17 shall appear prominently on the face of the card.

5 18 Sec. 7. Section 715A.8, subsections 2 and 3, Code 2007,
5 19 are amended to read as follows:

5 20 2. A person commits the offense of identity theft if the
5 21 person fraudulently uses or attempts to fraudulently use
5 22 identification information of another person or fictitious
5 23 person, with the intent to contract for or to obtain credit,
5 24 property, services, employment, or other benefit.

5 25 3. If the value of the credit, property, ~~or~~ services,
5 26 employment, or other benefits exceeds one thousand dollars,
5 27 the person commits a class "D" felony. If the value of the
5 28 credit, property, ~~or~~ services, employment, or other benefits
5 29 does not exceed one thousand dollars or if a value cannot be
5 30 determined, the person commits an aggravated misdemeanor.

5 31 Sec. 8. Section 715A.9, Code 2007, is amended to read as
5 32 follows:

5 33 715A.9 VALUE FOR PURPOSES OF IDENTITY THEFT.

5 34 The value of property, ~~or~~ services, employment, or other
5 35 benefits is ~~its~~ the highest value by any reasonable standard
6 1 at the time the identity theft is committed. Any reasonable
6 2 standard includes but is not limited to market value within
6 3 the community, actual value, or replacement value.

6 4 If credit, property, ~~or~~ services, employment, or other
6 5 benefits are obtained by two or more acts from the same person
6 6 or location, or from different persons by two or more acts
6 7 which occur in approximately the same location or time period
6 8 so that the identity thefts are attributable to a single
6 9 scheme, plan, or conspiracy, the acts may be considered as a
6 10 single identity theft and the value may be the total value of
6 11 all credit, property, ~~and~~ services, employment, or other
6 12 benefits involved.

6 13 DIVISION II

6 14 BAIL RESTRICTIONS

6 15 Sec. 9. Section 811.1, Code 2007, is amended by adding the
6 16 following new subsection:

6 17 NEW SUBSECTION. 4. A defendant who is an identified
6 18 unauthorized alien and is not lawfully present in the United
6 19 States.

6 20 Sec. 10. NEW SECTION. 811.1B UNAUTHORIZED ALIEN ==
6 21 NOTIFICATION.

6 22 The law enforcement agency responsible for the arrest of a
6 23 defendant who has been denied bail pursuant to section 811.1,
6 24 subsection 4, shall notify the United States immigration and
6 25 customs enforcement about the defendant who has been denied
6 26 bail.

6 27 Sec. 11. IMPLEMENTATION OF ACT. Section 25B.2, subsection
6 28 3, shall not apply to the sections of this Act amending
6 29 section 811.1 and enacting section 811.1B.

6 30 DIVISION III

6 31 EMPLOYMENT PROHIBITIONS

6 32 Sec. 12. NEW SECTION. 91F.1 DEFINITIONS.

6 33 As used in this chapter:

6 34 1. "Commissioner" means the labor commissioner appointed
6 35 pursuant to section 91.2 or the labor commissioner's designee.
7 1 2. "Employee" means a natural person who is employed in
7 2 this state for wages paid on an hourly basis by an employer.
7 3 3. "Employer" means a person, as defined in section 4.1,
7 4 who in this state employs for wages, paid on an hourly basis,
7 5 one or more natural persons. An employer does not include a
7 6 client, patient, customer, or other person who obtains
7 7 professional services from a licensed person who provides the
7 8 services on a fee service basis or as an independent
7 9 contractor, or the state, or an agency or governmental
7 10 subdivision of the state.
7 11 4. "Unauthorized alien" means a person who is not lawfully
7 12 present in the United States.

7 13 Sec. 13. NEW SECTION. 91F.2 UNAUTHORIZED ALIENS ==
7 14 EMPLOYER PROHIBITION.

7 15 An employer shall not knowingly employ as an employee an
7 16 unauthorized alien. For purposes of this section, "knowingly
7 17 employ as an employee an unauthorized alien" means an employer
7 18 has actual knowledge that a person is an unauthorized alien
7 19 and employs the person as an employee. An employer who
7 20 obtains a verification receipt of employment eligibility from
7 21 the program authorized by the federal Illegal Immigration
7 22 Reform and Immigrant Responsibility Act of 1996, Pub. L. No.
7 23 104=208, shall not be considered in violation of this chapter.

7 24 Sec. 14. NEW SECTION. 91F.3 PENALTIES.

7 25 1. An employer who violates section 91F.2 is subject to a
7 26 civil penalty of up to ten thousand dollars.

7 27 2. A corporate officer of an employer who, by knowingly
7 28 directing the repeated violation of section 91F.2,
7 29 demonstrates a pattern of employing unauthorized aliens
7 30 commits a serious misdemeanor.

7 31 3. An employer who, through repeated violation of section
7 32 91F.2, demonstrates a pattern of employing unauthorized aliens
7 33 may be ordered to pay punitive damages.

7 34 Sec. 15. NEW SECTION. 91F.4 DUTIES AND AUTHORITY OF THE
7 35 COMMISSIONER == ENFORCEMENT BY COUNTY ATTORNEY.

8 1 1. The commissioner shall adopt rules to implement and
8 2 enforce this chapter.

8 3 2. In order to carry out the purposes of this chapter, the
8 4 commissioner or the commissioner's representative, upon
8 5 presenting appropriate credentials to an employer's owner,
8 6 operator, or agent in charge, may:

8 7 a. Inspect employment records relating to the employees of
8 8 the employer.

8 9 b. Interview an employer, owner, operator, agent, or
8 10 employee, during working hours or at other reasonable times.

8 11 3. If the commissioner has reason to believe that an
8 12 employer may be in violation of this chapter, the commissioner
8 13 shall notify the appropriate county attorney, and provide the
8 14 county attorney with any supporting information, for
8 15 prosecution of the violation.

8 16 Sec. 16. NEW SECTION. 91F.5 PROHIBITIONS RELATING TO
8 17 CERTAIN ACTIONS BY EMPLOYEES == PENALTY == CIVIL REMEDY.

8 18 1. An employer shall not discharge an employee or take or
8 19 fail to take action regarding an employee's appointment or
8 20 proposed appointment or promotion or proposed promotion, or
8 21 regarding any advantage of an employee as a reprisal for a
8 22 failure by that employee to inform the employer that the
8 23 employee made a disclosure of information to any law
8 24 enforcement agency if the employee reasonably believes the
8 25 information evidences a violation of section 91F.2.

8 26 2. Subsection 1 does not apply if the disclosure of the
8 27 information is prohibited by statute.

8 28 3. An employer who violates subsection 1 commits a serious
8 29 misdemeanor.

8 30 4. Subsection 1 may be enforced through a civil action.

8 31 a. An employer who violates subsection 1 is liable to an
8 32 aggrieved employee for affirmative relief, including
8 33 reinstatement, with or without back pay, or any other
8 34 equitable relief the court deems appropriate, including
8 35 attorney fees and costs.

9 1 b. If an employer commits, is committing, or proposes to
9 2 commit an act in violation of subsection 1, an injunction may
9 3 be granted through an action in district court to prohibit the
9 4 person from continuing such acts. The action for injunctive
9 5 relief may be brought by an aggrieved employee or the county
9 6 attorney.

9 7 DIVISION IV
9 8 EMPLOYEE CLASSIFICATION

9 9 Sec. 17. NEW SECTION. 91G.1 PURPOSE.

9 10 The purpose of this chapter is to address the practice of
9 11 misclassifying employees as independent contractors.
9 12 Sec. 18. NEW SECTION. 91G.2 DEFINITIONS.
9 13 1. "Commissioner" means the labor commissioner appointed
9 14 pursuant to section 91.2 or the labor commissioner's designee.
9 15 2. "Construction" means any constructing, altering,
9 16 reconstructing, repairing, rehabilitating, refinishing,
9 17 refurbishing, remodeling, remediating, renovating, custom
9 18 fabricating, maintenance, landscaping, improving, wrecking,
9 19 painting, decorating, demolishing, and adding to or
9 20 subtracting from any building, structure, airport facility,
9 21 highway, roadway, street, alley, bridge, sewer, drain, ditch,
9 22 sewage disposal plant, water works, parking facility,
9 23 railroad, excavation or other project, development, real
9 24 property, or improvement, or to do any part thereof, whether
9 25 or not the performance of the work described in this
9 26 subsection involves an addition to, or fabrication into, any
9 27 structure, project, development, real property, or improvement
9 28 described in this subsection of any material or article of
9 29 merchandise.
9 30 3. "Contractor" means any person, as defined in section
9 31 4.1, engaged in construction. "Contractor" includes general
9 32 contractors, subcontractors, and the state of Iowa and its
9 33 officers, agencies, and political subdivisions.
9 34 4. "Division" means the division of labor services of the
9 35 department of workforce development.
10 1 5. "Interested party" means an individual performing
10 2 services for a contractor who alleges a violation of this
10 3 chapter or a person with an interest in compliance with this
10 4 chapter.
10 5 6. "Performing services" means any constructing, altering,
10 6 reconstructing, repairing, rehabilitating, refinishing,
10 7 refurbishing, remodeling, remediating, renovating, custom
10 8 fabricating, maintenance, landscaping, improving, wrecking,
10 9 painting, decorating, demolishing, and adding to or
10 10 subtracting from any building, structure, airport facility,
10 11 highway, roadway, street, alley, bridge, sewer, drain, ditch,
10 12 sewage disposal plant, water works, parking facility,
10 13 railroad, excavation or other project, development, real
10 14 property, or improvement, or to do any part thereof, whether
10 15 or not the performance of the work described in this
10 16 subsection involves an addition to, or fabrication into, any
10 17 structure, project, development, real property, or improvement
10 18 described in this subsection of any material or article of
10 19 merchandise.
10 20 Sec. 19. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS
10 21 PERFORMING SERVICES.
10 22 1. An individual performing services shall be classified
10 23 as an employee unless all of the following conditions are
10 24 present and are intended to create an independent contractor
10 25 relationship between the individual and the contractor:
10 26 a. The contractor does not control or direct the
10 27 performance of services by the individual.
10 28 b. The contractor is not responsible for the payment of
10 29 the individual's wages.
10 30 c. The contractor does not have the right to discharge or
10 31 terminate the working relationship with the individual.
10 32 d. The contractor is not the authority in charge of the
10 33 work or for whose benefit the individual is providing
10 34 services.
10 35 2. An individual classified as an employee under this
11 1 section shall also be classified as an employee pursuant to
11 2 chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits
11 3 a violation of this chapter by not treating the individual so
11 4 classified under this chapter as an employee pursuant to
11 5 chapters 85, 85A, 85B, 88, 91A, and 96.
11 6 3. An individual who is an owner-operator as described in
11 7 section 85.61, subsection 11, and not deemed an employee under
11 8 that subsection shall not be classified as an employee under
11 9 this section.
11 10 Sec. 20. NEW SECTION. 91G.4 NOTICE OF LAW.
11 11 1. The commissioner shall create posters in both English
11 12 and Spanish summarizing the requirements of this chapter. The
11 13 English and Spanish versions of the poster shall be posted on
11 14 the division's internet site and on bulletin boards in the
11 15 workforce centers.
11 16 2. The commissioner shall provide the posters without
11 17 charge to contractors upon request.
11 18 3. If a contractor violates section 91G.3 or 91G.8 or
11 19 rules adopted pursuant to any of those sections, the
11 20 contractor shall post the English and Spanish versions of the

11 21 poster created by the commissioner. The posters shall be
11 22 posted in conspicuous locations at the places where notices to
11 23 employees are normally posted at each job site and office of
11 24 the contractor.

11 25 Sec. 21. NEW SECTION. 91G.5 ENFORCEMENT.

11 26 1. An interested party may file a written complaint with
11 27 the commissioner alleging a violation of section 91G.3, 91G.4,
11 28 or 91G.8 or rules adopted pursuant to any of those sections.
11 29 An interested party who makes a complaint when the interested
11 30 party knows such representation to be false commits a simple
11 31 misdemeanor.

11 32 2. The commissioner shall adopt rules pursuant to and
11 33 consistent with chapter 17A regarding investigations to
11 34 determine whether a contractor has violated any provisions of
11 35 this chapter or any rules adopted pursuant to this chapter.

12 1 3. The commissioner shall enforce the provisions of this
12 2 chapter. The commissioner may conduct investigations in
12 3 connection with the administration and enforcement of this
12 4 chapter and may visit and inspect, at all reasonable times,
12 5 any places where individuals are performing services for a
12 6 contractor and may inspect, at all reasonable times, documents
12 7 related to the determination of whether an individual is an
12 8 employee under section 91G.3.

12 9 4. The commissioner and an employee of the commissioner
12 10 shall be indemnified for any damages and legal expenses
12 11 incurred as a result of the good-faith performance of the
12 12 employee's official duties under this chapter, in regard to
12 13 any claim for civil damages not specifically covered by the
12 14 Iowa tort claims Act, chapter 669.

12 15 5. The commissioner may compel by subpoena the attendance
12 16 and testimony of witnesses and the production of books,
12 17 payrolls, records, papers, and other evidence in an
12 18 investigation and may administer oaths to witnesses.

12 19 6. Upon the failure or refusal of any person to obey a
12 20 subpoena, the commissioner may petition a district court of
12 21 competent jurisdiction, and upon proper showing, the court may
12 22 enter an order compelling the witness to appear and testify or
12 23 produce documentary evidence. Failure to obey the court order
12 24 is punishable as contempt of court.

12 25 7. A determination by the commissioner as to whether a
12 26 violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
12 27 pursuant to any of those sections has occurred shall be
12 28 considered final agency action under chapter 17A.

12 29 8. If the commissioner determines upon investigation that
12 30 a violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
12 31 pursuant to any of those sections has occurred, the
12 32 commissioner may do any of the following:

12 33 a. Issue and cause to be served on any party an order to
12 34 cease and desist from any further violation.

12 35 b. Take affirmative or other action as deemed reasonable
13 1 to eliminate the effect of any violation.

13 2 c. Collect the amount of any wages, salary, employment
13 3 benefits, or other compensation denied or lost to an
13 4 individual.

13 5 d. Assess any civil penalty allowed by this chapter.

13 6 e. Refer matters to the county attorney upon determining
13 7 that a criminal violation may have occurred.

13 8 9. Judicial review of any final agency action of the
13 9 commissioner taken pursuant to this section may be sought in
13 10 accordance with the terms of chapter 17A. If a petition for
13 11 judicial review is not filed within thirty days after service
13 12 of the determination of the commissioner, the commissioner's
13 13 determination shall be conclusive in connection with any
13 14 petition for enforcement filed by the commissioner and in such
13 15 case, the clerk of court, unless otherwise ordered by the
13 16 court, shall forthwith enter a decree enforcing the
13 17 commissioner's determination and shall transmit a copy of the
13 18 decree to the commissioner and the contractor named in the
13 19 petition.

13 20 10. A contractor shall not be liable under this chapter
13 21 for any other contractor's failure to properly classify
13 22 individuals.

13 23 11. In any civil action to enforce the provisions of this
13 24 chapter, the commissioner may be represented by an attorney
13 25 employed by the division or, at the commissioner's request, by
13 26 the attorney general.

13 27 Sec. 22. NEW SECTION. 91G.6 PENALTIES.

13 28 1. A contractor who violates section 91G.3, 91G.4, or
13 29 91G.8 or rules adopted pursuant to one of those sections is
13 30 subject to a civil penalty not to exceed one thousand two
13 31 hundred fifty dollars for a first violation as determined by

13 32 the commissioner. A contractor is subject to a civil penalty
13 33 not to exceed one thousand eight hundred seventy-five dollars
13 34 for a second violation occurring within six years of a first
13 35 violation as determined by the commissioner. A contractor
14 1 shall be subject to a civil penalty not to exceed three
14 2 thousand one hundred twenty-five dollars for a third or
14 3 successive violation occurring within six years of a first
14 4 violation as determined by the commissioner.

14 5 2. A contractor who violates any provision of section
14 6 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to one of
14 7 those sections commits a simple misdemeanor. A contractor who
14 8 commits such a second violation within six years of a first
14 9 violation commits a serious misdemeanor. A contractor who
14 10 commits such a third or subsequent violation within six years
14 11 of a first violation commits an aggravated misdemeanor.

14 12 3. A contractor who obstructs the commissioner, the
14 13 employee of the commission, or another person authorized to
14 14 inspect places where individuals are performing services for a
14 15 contractor is subject to a civil penalty not to exceed one
14 16 thousand eight hundred seventy-five dollars.

14 17 4. Each violation described in this section for each
14 18 individual and for each day the violation continues
14 19 constitutes a separate and distinct violation. In determining
14 20 the amount of a civil penalty, the commissioner shall consider
14 21 the appropriateness of the civil penalty to the contractor and
14 22 the gravity of the violation.

14 23 Sec. 23. NEW SECTION. 91G.7 STATE CONTRACT PROHIBITION.
14 24 For a second or subsequent violation of section 91G.3 or
14 25 91G.4 determined by the commissioner to have occurred within
14 26 six years of an earlier violation or for a first or subsequent
14 27 violation of section 91G.8, the commissioner shall add the
14 28 contractor's name to a list to be posted on the division's
14 29 internet site and notify the violating contractor of the
14 30 posting. A state contract shall not be awarded to a
14 31 contractor whose name appears on the list until three years
14 32 have elapsed from the date of the determination of the last
14 33 violation.

14 34 Sec. 24. NEW SECTION. 91G.8 RETALIATION.

14 35 1. A contractor or contractor's agent shall not retaliate
15 1 through discharge or in any other manner against an individual
15 2 for any of the following:

15 3 a. Making a good-faith complaint to the commissioner or to
15 4 a state or federal agency regarding a violation of section
15 5 91G.3 or 91G.4.

15 6 b. Testifying or otherwise cooperating in an investigation
15 7 or proceeding under this chapter.

15 8 2. Such retaliation shall subject a contractor or
15 9 contractor's agent to civil penalties and a prohibition on
15 10 being awarded state contracts pursuant to this chapter and may
15 11 give rise to a private right of action.

15 12 Sec. 25. NEW SECTION. 91G.9 DISPOSITION OF PENALTIES.
15 13 Any penalties assessed and collected by the commissioner
15 14 pursuant to this chapter shall be deposited in the general
15 15 fund of the state.

15 16 Sec. 26. NEW SECTION. 91G.10 PRIVATE RIGHT OF ACTION.

15 17 1. An individual, who has not received compensatory
15 18 damages under section 91G.5, alleging a contractor's violation
15 19 of this chapter or a rule adopted pursuant to this chapter and
15 20 damages may file suit in district court against the
15 21 contractor, in the county where the alleged violation
15 22 occurred, or where any person who is party to the action
15 23 resides, without regard to exhaustion of any alternative
15 24 administrative remedies provided in this chapter. Actions may
15 25 be brought by one or more aggrieved individuals for and on
15 26 behalf of themselves and other individuals similarly situated.

15 27 2. If it is established that an individual has been
15 28 damaged through a proceeding under subsection 1 by a
15 29 contractor who has willfully violated a provision of this
15 30 chapter or a rule adopted pursuant to this chapter, the
15 31 individual shall be entitled to collect the following:

15 32 a. The amount of any wages, salary, employment benefits,
15 33 or other compensation denied or lost to the individual due to
15 34 the violation or a retaliatory action, and court costs and
15 35 interest at the statutory rate from the date of filing.

16 1 b. Punitive damages, not to exceed five times the amount
16 2 awarded in paragraph "a".

16 3 c. Reasonable attorney fees, if the contractor who has
16 4 damaged the individual has committed a second or subsequent
16 5 violation of section 91G.3, 91G.4, or 91G.8, or rules adopted
16 6 pursuant to this chapter, occurring within six years of a
16 7 first violation.

16 8 3. The right of a damaged individual to bring an action
16 9 under this section terminates five years from the date of the
16 10 alleged violation by the contractor.

16 11 Sec. 27. NEW SECTION. 91G.11 COOPERATION.

16 12 1. All state agencies shall cooperate under this chapter
16 13 by sharing information concerning possible misclassification
16 14 by a contractor of one or more of the contractor's employees
16 15 as independent contractors.

16 16 2. Upon determining that a contractor misclassified one or
16 17 more employees as independent contractors in violation of this
16 18 chapter, the commissioner shall notify the division
16 19 administering unemployment insurance services, the division of
16 20 workers' compensation, and the department of revenue, each of
16 21 which shall investigate the contractor's compliance with
16 22 applicable laws.

16 23 3. Cooperation under this chapter shall be considered a
16 24 duty of office for the commissioner or the commissioner's
16 25 designee and the heads of the state agencies named in
16 26 subsection 1 or their designees. Failure to so cooperate
16 27 constitutes a violation of section 721.2, subsection 6.

16 28 Sec. 28. NEW SECTION. 91G.12 REPORTING REQUIREMENT.

16 29 The commissioner shall submit an annual report about the
16 30 administration of this chapter to the general assembly by
16 31 January 15. The first annual report shall be due January 15,
16 32 2010.

16 33 Sec. 29. Section 85.61, subsection 11, paragraph b, Code
16 34 Supplement 2007, is amended to read as follows:

16 35 b. (1) "Worker" or "employee" includes an inmate as
17 1 defined in section 85.59 and a person described in section
17 2 85.60.

17 3 (2) "Worker" or "employee" includes an individual who is
17 4 classified as an employee pursuant to section 91G.3.

17 5 Sec. 30. Section 86.45, subsection 2, Code 2007, is
17 6 amended by adding the following new paragraph:

17 7 NEW PARAGRAPH. j. To cooperate with the division of labor
17 8 services, the division of the department of workforce
17 9 development that administers unemployment insurance services,
17 10 and the department of revenue pursuant to chapter 91G by
17 11 sharing information concerning possible misclassification of
17 12 one or more employees as independent contractors.

17 13 Sec. 31. Section 88.3, subsection 4, Code 2007, is amended
17 14 to read as follows:

17 15 4. "Employee" means an employee of an employer who is
17 16 employed in a business of the employer. "Employee" also means
17 17 an inmate as defined in section 85.59, when the inmate works
17 18 in connection with the maintenance of the institution, in an
17 19 industry maintained in the institution, or while otherwise on
17 20 detail to perform services for pay. "Employee" also means a
17 21 volunteer involved in responses to hazardous waste incidences.
17 22 The employer of a volunteer is that entity which provides or
17 23 which is required to provide workers' compensation coverage
17 24 for the volunteer. "Employee" includes an individual who is
17 25 classified as an employee pursuant to section 91G.3.

17 26 Sec. 32. Section 91A.2, subsection 3, unnumbered paragraph
17 27 1, Code 2007, is amended to read as follows:

17 28 "Employee" means a natural person who is employed in this
17 29 state for wages by an employer. Employee also includes a
17 30 commission salesperson who takes orders or performs services
17 31 on behalf of a principal and who is paid on the basis of
17 32 commissions but does not include persons who purchase for
17 33 their own account for resale. "Employee" includes an
17 34 individual who is classified as an employee pursuant to
17 35 section 91G.3. For the purposes of this chapter, the

18 1 following persons engaged in agriculture are not employees:

18 2 Sec. 33. Section 96.11, Code Supplement 2007, is amended
18 3 by adding the following new subsection:

18 4 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.

18 5 a. All state agencies shall cooperate with the director
18 6 and the department pursuant to chapter 91G by sharing
18 7 information concerning possible misclassification of employees
18 8 as independent contractors.

18 9 b. Cooperation under this chapter shall be considered a
18 10 duty of office for the heads of the state agencies named in
18 11 subsection 1 or their designees. Failure to so cooperate
18 12 constitutes a violation of section 721.2, subsection 6.

18 13 Sec. 34. Section 96.19, subsection 18, paragraph a,
18 14 subparagraph (2), Code 2007, is amended to read as follows:

18 15 (2) Any individual who, under the usual common law rules
18 16 applicable in determining the employer=employee relationship,
18 17 has the status of an employee, or any individual who is
18 18 classified as an employee pursuant to section 91G.3, or

DIVISION V

CORRESPONDING AMENDMENTS

18 19
18 20
18 21 Sec. 35. Section 84A.5, subsection 4, Code Supplement
18 22 2007, is amended to read as follows:

18 23 4. The division of labor services is responsible for the
18 24 administration of the laws of this state under chapters 88,
18 25 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91G, 92,
18 26 and 94A, and section 85.68. The executive head of the
18 27 division is the labor commissioner, appointed pursuant to
18 28 section 91.2.

18 29 Sec. 36. Section 91.4, subsection 5, Code Supplement 2007,
18 30 is amended to read as follows:

18 31 5. The director of the department of workforce
18 32 development, in consultation with the labor commissioner,
18 33 shall, at the time provided by law, make an annual report to
18 34 the governor setting forth in appropriate form the business
18 35 and expense of the division of labor services for the
19 1 preceding year, the number of disputes or violations processed
19 2 by the division and the disposition of the disputes or
19 3 violations, and other matters pertaining to the division which
19 4 are of public interest, together with recommendations for
19 5 change or amendment of the laws in this chapter and chapters
19 6 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91G, 92,
19 7 and 94A, and section 85.68, and the recommendations, if any,
19 8 shall be transmitted by the governor to the first general
19 9 assembly in session after the report is filed.

DIVISION VI

SEVERABILITY AND EFFECTIVE DATE

19 11 Sec. 37. SEVERABILITY. The provisions of this Act are
19 12 severable in the manner provided by section 4.12.

19 13 Sec. 38. EFFECTIVE DATE. This Act takes effect January 1,
19 14 2009.
19 15

EXPLANATION

19 16
19 17 DIVISION I. This division of this bill creates article 9,
19 18 an identity theft division within the department of
19 19 inspections and appeals that relates to the investigation and
19 20 enforcement of identity theft protections relating to the
19 21 benefit of gaining employment in this state.

19 22 Code section 10A.901 provides definitions.

19 23 Code section 10A.902 requires employers to verify the
19 24 identity of each new employee hired to work in the state by
19 25 examining a driver's license or nonoperator's identification
19 26 card from Iowa, Minnesota, South Dakota, Nebraska, Missouri,
19 27 Illinois, or Wisconsin, for facial validity within 10 business
19 28 days after hiring. The employer or employer's designee must
19 29 certify under oath or affirmation by signing a form under
19 30 penalty of perjury that the license or card was examined. The
19 31 employer or employer's designee is required to photocopy the
19 32 license or card and retain the photocopy and the executed form
19 33 for the duration of the employee's employment and one year
19 34 after the end of the employee's employment. An employer may
19 35 give someone else the authority to hire new employees, examine
20 1 the license or card, and handle recordkeeping duties but the
20 2 employer shall remain responsible for the designee's actions.

20 3 The employer or employer's designee faces civil penalties
20 4 that are detailed in the bill for violations of Code section
20 5 10A.902. If the department of inspections and appeals
20 6 administrator determines that the employer's designee is
20 7 responsible for the violation, the employer may face a
20 8 corresponding civil penalty.

20 9 Code section 10A.902 requires the department of inspections
20 10 and appeals to create a form that the employer or employer's
20 11 designee must sign for each new employee. The form will
20 12 include a statement that the employer or employer's designee
20 13 has personally certified under oath or affirmation under
20 14 penalty of perjury that the employer or employer's designee
20 15 examined an authorized driver's license or nonoperator's
20 16 identification card and determined that the license or card
20 17 was facially valid to the best of the employer's or designee's
20 18 knowledge, information, and belief. The form must indicate if
20 19 the signee is the employer or the employer's designee. The
20 20 form shall include color examples of the front and back of all
20 21 authorized driver's licenses and nonoperator's identification
20 22 cards.

20 23 Code section 10A.902 states that a person who commits
20 24 perjury under Code section 10A.902 commits a class "D" felony.
20 25 Additionally, a person who suborns perjury also commits a
20 26 class "D" felony. A class "D" felony is punishable by
20 27 confinement for no more than five years and a fine of at least
20 28 \$750 but not more than \$7,500. The bill states that the Iowa
20 29 civil rights commission retains full investigative authority

20 30 pursuant to Code chapter 216.
20 31 Code section 10A.903 sets out the enforcement provisions.
20 32 The department of inspections and appeals' administrator will
20 33 investigate and enforce cases where an employer or employer's
20 34 designee violates the requirements of or rules adopted
20 35 pursuant to Code section 10A.902.

21 1 If upon investigation, the department of inspections and
21 2 appeals' administrator believes that an employer or employer's
21 3 designee has violated article 9, the department of inspections
21 4 and appeals' administrator will issue a citation and civil
21 5 penalty. The citation will be in writing and describe the
21 6 nature of the violation. A determination by the department of
21 7 inspections and appeals' administrator as to whether a
21 8 violation of Code section 10A.902 or rules adopted pursuant to
21 9 the Code section has occurred is considered final agency
21 10 action.

21 11 Judicial review of a final agency action by the department
21 12 of inspections and appeals' administrator may be taken within
21 13 30 days according to the terms of Code chapter 17A. If no
21 14 petition for judicial review is filed within 30 days, the
21 15 determination of the department of inspections and appeals'
21 16 administrator is considered conclusive for any petition for
21 17 enforcement that the administrator may file. Upon petition by
21 18 the department of inspections and appeals' administrator, the
21 19 clerk of court, unless otherwise ordered by the court, shall
21 20 enter a decree enforcing the order.

21 21 Code section 10A.904 requires all state agencies to share
21 22 information about employee identity verification. Failure to
21 23 do so is a violation of Code section 721.2(6), which is a
21 24 serious misdemeanor, which could result in confinement for no
21 25 more than one year or a fine of at least \$315 but not more
21 26 than \$1,875.

21 27 Code section 10A.905 requires the administrator to submit
21 28 an annual report to the general assembly. The first report is
21 29 due January 15, 2010.

21 30 Currently an Iowa operator's identification card cannot be
21 31 issued to anyone who has a driver's license from any other
21 32 state. Code section 321.190(1)(b) is amended to continue to
21 33 prohibit only a person with an Iowa driver's license from
21 34 receiving a nonoperator's identification card. The amendment
21 35 allows a card to be issued to a resident with a temporary
22 1 permit or to a nonresident, with or without a non-Iowa
22 2 driver's license, for the purpose of identity verification for
22 3 employment.

22 4 Code section 715A.8(2), which creates the crime of identity
22 5 theft, is amended to include the elements of attempting to
22 6 fraudulently use the identification information of a
22 7 fictitious person to contract for various benefits, including
22 8 to obtain employment. Code section 715A.8(3) is amended to
22 9 include employment and other benefits as value derived from
22 10 committing identity theft and to provide that if identity
22 11 theft is committed but no value can be determined, the person
22 12 commits an aggravated misdemeanor, which is punishable by
22 13 confinement for no more than two years and a fine of at least
22 14 \$625 but not more than \$6,250.

22 15 Code section 715A.9 is amended to include employment and
22 16 other benefits for determining the value derived from
22 17 committing identity theft.

22 18 DIVISION II. Code section 811.1 is amended to add
22 19 subsection 4, which includes unauthorized aliens as ineligible
22 20 for bail. Code section 811.1B is added, requiring law
22 21 enforcement officials who arrest an unauthorized alien
22 22 pursuant to Code section 811.1(4) to notify United States
22 23 immigration officials.

22 24 DIVISION III. This division of the bill creates Code
22 25 chapter 91F and relates to employment prohibitions in regards
22 26 to unauthorized aliens.

22 27 Code section 91F.1 includes definitions pertinent to the
22 28 Code chapter.

22 29 Code section 91F.2 states that an employer shall not
22 30 knowingly employ an unauthorized alien as an employee. An
22 31 employer who obtains a verification receipt of employability
22 32 from the federal eVerify program that is run by the United
22 33 States immigration and customs enforcement agency for an
22 34 employee is exempt from penalties under this Code chapter.

22 35 Code section 91F.3 details penalties for violations of this
23 1 Code chapter. A violation of Code section 91F.2 may result in
23 2 a civil penalty of up to \$10,000. A corporate officer of an
23 3 employer, who directs repeated violations of Code section
23 4 91F.2, commits a serious misdemeanor, which is punishable by
23 5 confinement for no more than one year and a fine of at least

23 6 \$315 but not more than \$1,875. An employer that demonstrates
23 7 repeated violations of Code section 91F.2 may be ordered to
23 8 pay punitive damages.
23 9 Code section 91F.4 gives the commissioner authority to
23 10 adopt rules to implement and enforce this Code chapter. The
23 11 Code section also allows the commissioner for the purposes of
23 12 this Code chapter to inspect employment records, interview
23 13 employees during working hours, and notify the county attorney
23 14 if violations are suspected.

23 15 Code section 91F.5 prohibits an employer from discharging
23 16 an employee or acting in reprisal against an employee who
23 17 makes a disclosure of information to any law enforcement
23 18 agency that the employee reasonably believes is related to a
23 19 violation pursuant to Code section 91F.2. However, this does
23 20 not apply if the disclosure was prohibited by law. An
23 21 employer who violates the Code section commits a serious
23 22 misdemeanor, which is punishable by confinement for no more
23 23 than one year and a fine of at least \$315 but not more than
23 24 \$1,875. An aggrieved employee may also seek a civil remedy
23 25 for a violation of this Code section by an employer.

23 26 DIVISION IV. This division of the bill creates Code
23 27 chapter 91G and relates to the classification of individuals
23 28 as employees or independent contractors.

23 29 Code section 91G.1 addresses the purpose of the Code
23 30 chapter.

23 31 Code section 91G.2 includes definitions pertinent to the
23 32 Code chapter.

23 33 Code section 91G.3 classifies the status of individuals
23 34 performing services. Code section 91G.3(1) provides the
23 35 criteria for determining the status of an individual as an
24 1 employee. Code section 91G.3(2) provides that an individual
24 2 classified as an employee under this Code section also
24 3 qualifies as an employee for the purposes of Code chapters 85,
24 4 85A, and 85B (workers' compensation), 88 (occupational safety
24 5 and health), 91A (wage payment collection), and 96
24 6 (unemployment compensation). It is a violation of Code
24 7 chapter 91G to fail to properly classify an individual as an
24 8 employee under these Code chapters. Code section 91G.3(3)
24 9 provides that an individual who is an owner-operator as
24 10 described in Code section 85.61(11) shall not be classified as
24 11 an employee under Code section 91G.3.

24 12 Code section 91G.4 requires the commissioner to create
24 13 posters in both English and Spanish that summarize the Code
24 14 chapter requirements. If a contractor is found to have
24 15 violated Code sections 91G.3 or 91G.8, the contractor must
24 16 post the posters in both languages in conspicuous places at
24 17 all job sites and offices.

24 18 Code section 91G.5 provides enforcement provisions. In
24 19 Code section 91G.5(1), an interested party may file a written
24 20 complaint alleging a violation of this Code chapter. However,
24 21 a party who knowingly makes a false complaint commits a simple
24 22 misdemeanor, which is punishable by confinement for no more
24 23 than 30 days or a fine of at least \$65 but not more than \$625
24 24 or by both. Under Code section 91G.5(2), the commissioner is
24 25 charged with establishing rules consistent with Code chapter
24 26 17A. In Code section 91G.5(3), the commissioner is charged
24 27 with investigating complaints and conducting investigations.

24 28 Under Code section 91G.5(4), the commissioner and employees
24 29 are indemnified for damages and legal expenses incurred as a
24 30 result of the good-faith performance of their job duties
24 31 against any claims not covered by Code chapter 669, the Iowa
24 32 tort claims Act. Under Code section 91G.5(5), the
24 33 commissioner may administer oaths and issue subpoenas to
24 34 access witnesses and documents, payroll records, and other
24 35 evidence in order to advance an investigation. Code section
25 1 91G.5(6) allows the commissioner or the commissioner's
25 2 investigators to commence a contempt action in court
25 3 commanding a person to obey the order of the commissioner
25 4 issued under Code chapter 91G or be adjudged guilty of
25 5 contempt of court.

25 6 Under Code section 91G.5(7), a determination by the
25 7 commissioner about whether a violation has occurred is final
25 8 agency action. Under Code section 91G.5(8), when the
25 9 commissioner determines there has been a violation, the
25 10 commissioner may take specific actions, including cease and
25 11 desist, individual compensatory, and civil penalty remedies.

25 12 Under Code section 91G.5(9), judicial review of a final
25 13 agency action by the commissioner may be instituted within 30
25 14 days according to the terms of Code chapter 17A. If no
25 15 petition of review is filed within 30 days, the commissioner's
25 16 findings are considered conclusive for any petition for

25 17 enforcement that the commissioner may file. Upon petition by
25 18 the commissioner, the clerk of the court, unless otherwise
25 19 ordered by the court, shall enter a decree enforcing the
25 20 order.

25 21 In Code section 91G.5(10), a contractor is not responsible
25 22 for any other contractor's failure to properly classify
25 23 individuals who perform services for the contractor. In Code
25 24 section 91G.5(11), in a civil action, the commissioner may
25 25 choose to be represented by a departmental attorney or the
25 26 attorney general.

25 27 Code section 91G.6 deals with the penalties. In Code
25 28 section 91G.6(1), a contractor who violates this Code chapter
25 29 or any rule adopted pursuant to this Code chapter shall be
25 30 subject to a civil penalty not to exceed \$1,250 for the first
25 31 violation, up to \$1,875 for a second violation within six
25 32 years of the first, and up to \$3,125 for a third or successive
25 33 violation within six years of the first violation.

25 34 Under Code section 91G.6(2), a contractor who violates any
25 35 provision of this Code chapter or any rule adopted pursuant to
26 1 this Code chapter commits a simple misdemeanor, which is
26 2 punishable by confinement for no more than 30 days or a fine
26 3 of at least \$65 but not more than \$625 or by both. A
26 4 contractor who commits a second violation within a six-year
26 5 period commits a serious misdemeanor, which is punishable by
26 6 confinement for no more than one year and a fine of at least
26 7 \$315 but not more than \$1,875. A contractor who commits a
26 8 third or subsequent violation within a six-year period commits
26 9 an aggravated misdemeanor, which is punishable by confinement
26 10 for no more than two years and a fine of at least \$625 but not
26 11 more than \$6,250. Under Code section 91G.6(3), any contractor
26 12 who obstructs the commissioner's inspection of places of
26 13 employment shall be liable for a civil penalty of up to
26 14 \$1,875. Under Code section 91G.6(4), each violation for each
26 15 individual and for each day the violation continues
26 16 constitutes a separate and distinct violation. In determining
26 17 the amount of a penalty, the commissioner shall consider the
26 18 appropriateness of the penalty to the contractor and the
26 19 gravity of the violation.

26 20 Code section 91G.7 provides that if a contractor is found
26 21 to have violated a provision of Code section 91G.3 or 91G.4 a
26 22 second or subsequent time within six years of an earlier
26 23 violation or is found to have violated, for a first or
26 24 subsequent time, Code section 91G.8, the contractor's name
26 25 shall be posted on the division's internet site. A state
26 26 contract shall not be awarded to a contractor whose name
26 27 appears on the posting until three years have passed from the
26 28 date of the last violation determination.

26 29 Code section 91G.8 makes it a violation of the Code chapter
26 30 for a contractor or a contractor's agent to retaliate in any
26 31 way against an individual for making a good-faith complaint or
26 32 cooperating in an investigation. Retaliation subjects the
26 33 contractor to civil penalties, to being banned from state
26 34 contracts, and a possible private right of action.

26 35 Under Code section 91G.9, any civil penalties collected by
27 1 the commissioner shall be deposited in the general fund of the
27 2 state.

27 3 In Code section 91G.10, if an individual has not received
27 4 compensatory damages under Code section 91G.5, then the
27 5 individual who is damaged by an alleged Code chapter 91G
27 6 violation may file suit in district court in the county where
27 7 the alleged violation occurred or where any person who is
27 8 party to the violation resides and may do so without
27 9 exhausting any alternative administrative remedies in Code
27 10 chapter 91G. If it is established that an individual has been
27 11 willfully damaged through a proceeding under Code section
27 12 91G.10, remedies include compensatory damages, court costs and
27 13 interest, and punitive damages up to five times the amount of
27 14 the compensatory damages and court costs. If the contractor
27 15 who has damaged the individual has committed a second or
27 16 subsequent violation of this Code chapter, reasonable attorney
27 17 fees may be awarded. The right to bring a private action
27 18 terminates five years after the date of the alleged violation.

27 19 Code section 91G.11(1) requires all state agencies to
27 20 cooperate by sharing information about possible
27 21 misclassifications by contractors. Under Code section
27 22 91G.11(2), the commissioner shall notify the other agencies
27 23 when a misclassification violation is determined, and the
27 24 other agencies shall investigate. Code section 91G.11(3)
27 25 makes cooperation and investigation among the heads of the
27 26 state agencies a duty of office; failing to cooperate,
27 27 pursuant to Code section 721.2(6), results in a serious

27 28 misdemeanor, which is punishable by confinement for no more
27 29 than one year or a fine of at least \$315 but not more than
27 30 \$1,875.

27 31 Code section 91G.12 requires the commissioner to submit an
27 32 annual report to the general assembly. The first report is
27 33 due January 15, 2010.

27 34 The definition of "employee" in new Code section 91G.3 is
27 35 essentially incorporated as part of the definitions of
28 1 "employee" in the following amended Code sections: 85.61,
28 2 86.45, 88.3, 91A.2, and 96.19.

28 3 Code section 96.11 is amended by adding a new subsection
28 4 for interagency cooperation. The subsection requires all
28 5 state agencies to cooperate by sharing information about
28 6 possible misclassifications of employees by contractors.
28 7 Cooperation and investigation among the heads of the state
28 8 agencies is considered a duty of office; failing to cooperate,
28 9 pursuant to Code section 721.2(6), results in a serious
28 10 misdemeanor, which is punishable by confinement for no more
28 11 than one year or a fine of at least \$315 but not more than
28 12 \$1,875.

28 13 DIVISION V. In Code sections 84A.5 and 91.4 the division
28 14 of labor of the department of workforce development is given
28 15 responsibility for administration for new Code chapter 91G and
28 16 filing of annual reports about matters pertaining to these
28 17 Code chapters, respectively.

28 18 DIVISION VI. The provisions of the bill are severable as
28 19 provided by Code section 4.12.

28 20 The bill takes effect January 1, 2009.

28 21 LSB 6463HZ 82

28 22 ak/rj/24